THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 435 of 2006

DATED: 06-01-2006

Between:

M/s Golden Enterprises,

A proprietory concern,

Kamisetty street, Yanam ...Petitioner

And

The Commissioner of Prohibition and Excise

Government of Andhra Pradesh and

Another ...Respondents

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 435 of 2006

ORDER:

Petitioner filed this writ petition seeking to declare the action of the first respondent in passing the impugned order in Cr.No.1026/05/DOE/C2, dt.02-01-2006 in respect of permit No.75/DCEY/2005-2006, dt.27-10-2005 as illegal and arbitrary and for a consequential direction to the respondents to issue Through Transport Permits (T.T.Ps.) to the petitioner forthwith by considering his two applications dt.05-11-2005.

The grievance of the petitioner is that the first respondent rejected the request of the petitioner to issue Through Transport Permits by impugned order dated 02-01-2006 on the ground that the consumption of IMFL liquor in Yanam is 10 times higher and that of Beer is 21 times higher than that of the surrounding SHOs of the East Godavari District and obviously the said liquors are being diverted to the neighbouring districts in Andhra Pradesh and therefore issuance of Through Transport Permits is rejected. Under Section 11 of the A.P. Excise Act, it is open for the State Government to prohibit or regulate the transport and consumption of the IML liquor and Beer from one area to other area within the State or from any place outside the State through the intervening areas lying within the State.

Learned Government Pleader appearing for the respondent submitted that the Government framed rules called A.P. Excise (Import, Export, Transport Indian Liquor and Foreign Liquor) Permission Rules, 2005 in G.O.Rt.No.996, Excise Department, dt.25-10-2005 and as per Rule 16(5) the Commissioner of Prohibition and Excise is entitled to make such an enquiry and satisfy with regard to the moment of the liquors in contravention of any law for the time being in force and that it will not be unloaded within the State of A.P. then only entitled to issue a permit for transportation.

If there is any contravention of the provisions of the A.P. Excise Act and the rules made therein, it is always open to the respondents to take appropriate action. Without there being any specific contravention of any law, the impugned order is not in accordance with Section 11 r/w Rule 16(5) of the A.P. Excise (Import, Export, Transport Indian Liquor and Foreign Liquor) Permission Rules, 2005.

Having regard to the facts and circumstances of the case, the 2nd respondent is directed to consider the applications filed by the petitioner and pass fresh orders in accordance with Rule 16(5) of the A.P. Excise and Permission Rules, 2005 without reference to this impugned order, within a week from the date of receipt of a copy of this order.

Writ Petition is disposed of accordingly. No order as to costs.

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V. ESWARAIAH, J.

Dated: 06-01-2006.

Note: Issue C.C. within two days.

B/o

RNS